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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,129	04/01/2004	Jerome Tomlin	TOMLIN-2	9623

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BOSTON, MA 02111

EXAMINER
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MATHEW, FENN C

ART UNIT	PAPER NUMBER
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3764

MAIL DATE	DELIVERY MODE
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08/08/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/816,129	TOMLIN, JEROME	
	Examiner	Art Unit	
	Fenn C. Mathew	3764	
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>			
<b>Period for Reply</b>			
<b>A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.</b>			
<ul style="list-style-type: none"> <li>- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.</li> <li>- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.</li> <li>- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</li> </ul>			
<b>Status</b>			
1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>17 May 2007</u> .			
2a) <input checked="" type="checkbox"/> This action is FINAL.      2b) <input type="checkbox"/> This action is non-final.			
3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.			
<b>Disposition of Claims</b>			
4) <input checked="" type="checkbox"/> Claim(s) <u>2,5-13,15-17,19 and 21</u> is/are pending in the application.			
4a) Of the above claim(s) _____ is/are withdrawn from consideration.			
5) <input type="checkbox"/> Claim(s) _____ is/are allowed.			
6) <input checked="" type="checkbox"/> Claim(s) <u>2,5-13,15-17,19 and 21</u> is/are rejected.			
7) <input type="checkbox"/> Claim(s) _____ is/are objected to.			
8) <input type="checkbox"/> Claim(s) _____ are subject to restriction and/or election requirement.			
<b>Application Papers</b>			
9) <input type="checkbox"/> The specification is objected to by the Examiner.			
10) <input type="checkbox"/> The drawing(s) filed on _____ is/are: a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner.			
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).			
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).			
11) <input type="checkbox"/> The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.			
<b>Priority under 35 U.S.C. § 119</b>			
12) <input type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).			
a) <input type="checkbox"/> All    b) <input type="checkbox"/> Some * c) <input type="checkbox"/> None of:			
1. <input type="checkbox"/> Certified copies of the priority documents have been received.			
2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.			
3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).			
* See the attached detailed Office action for a list of the certified copies not received.			
<b>Attachment(s)</b>			
1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)		4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.	
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)		5) <input type="checkbox"/> Notice of Informal Patent Application	
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.		6) <input type="checkbox"/> Other: _____.	

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the zippers must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

2. Applicant is advised that should claim 5 be found allowable, claim 12 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 6 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The specification fails to disclose an embodiment including a fastening strap and zippers as substantially claimed. Appropriate correction is required.

5. Claims 9-10 and 16-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application

was filed, had possession of the claimed invention. The specification fails to disclose a ribbon-like elastic strap.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 2 and 5-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 8, the term "or some similarly dense material" is vague and indefinite.

8. In claim 10, Applicant has claimed a forearm securement strap with the weight positioned between the forearm securement strap and the glove section. Examiner is unclear as to whether Applicant is attempting to claim all the weight positioned between the strap and the glove section. Appropriate clarification is required. (Examiner notes that if Applicant intends for all the weight to be positioned between the strap and glove section, such a limitation is not supported by the specification).

9. In claims 2, 5-6, and 12 the term "said wrist...section[]" lacks positive antecedent basis. Examiner notes that the specification cites two section: a glove section, and a forearm section. Examiner presumes for examination that the wrist and forearm section are one in the same.

#### ***Claim Rejections - 35 USC § 102***

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

11. Claims 2, 8-9, 11, 13, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Groves et al. (U.S. 5,683,335). Referring to claim 8, as broadly claimed, Groves discloses an unweighted glove section (22), a forearm section, the glove and forearm section comprising pliable members, weight integrated with the forearm section, the weight comprising a plurality of lead shot, wherein the weight encircles the wrist of the user, and a securement band capable of extending around at least a portion of the weight. Referring to claim 2, as best understood, Groves discloses, the weight attached to the forearm section by a pocket located contiguous to the forearm section. Referring to claim 9, Groves teaches a flexible strap capable of extending around a portion of the weight. Referring to claim 11, Groves teaches the forearm section extending over less than half of the forearm of a user. Referring to claim 13 note the rejections above, as the claims are similar in scope.

***Claim Rejections - 35 USC § 103***

12. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

13. Claims 5 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groves. Groves teaches the claimed invention, and in another embodiment teaches the desirability of having a second strap. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to provide a second fastening strap as taught in other embodiments of Groves in order to better secure the device.

14. Claims 7 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groves in view of Jackson, Jr. (3,759,510). Groves teaches the claimed invention except for gloves having closed ended finger receiving members. Jackson, Jr. teaches the desirability of providing a glove with closed ended finger receiving members. In view of the teachings of Jackson, Jr. it would have been obvious to provide the Groves device with closed ends on the finger receiving member in order to protect the fingertips of the user. As best understood some of the weight will be positioned between the securement band and the unweighted glove section.

15. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Groves in view of Winston (U.S. 4,966,635). Groves teaches the claimed invention as noted in the rejections of claims 2, 5, 8, and 11-13 above. Groves fails to teach a plurality of flexible chambers. Winston teaches the desirability of providing chambers for a wrist engaging weight. In view of the teachings of Winston, it would have been obvious to one of ordinary skill in the art at the time of invention to provide a plurality of chambers encircling the wrist in order to evenly distribute granular weight around the wrist.

16. Claims 9-10 rejected under 35 U.S.C. 103(a) as being unpatentable over Groves further in view of Murray (U.S. 5,846,168). Groves teaches the claimed invention but fails to teach the securement band being elastic. Murray teaches the desirability of providing an elastic securement band citing the advantages of tighter securment. In view of the teachings of Murray, it would have been obvious to one of ordinary skill in the art at the time of invention to provide Groves with an elastic securement band in order to provide a tighter more comfortable fit. With respect to claim 10 Groves teaches

the claimed invention, and in another embodiment teaches the desirability of having a second strap. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to provide a second fastening strap as taught in other embodiments of Groves in order to better secure the device. Likewise, it would have been obvious to one of ordinary skill in the art at the time of invention to provide Groves with an elastic forearm securing band in order to provide a tighter more comfortable fit.

17. Claims 16-17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groves in view of Winston as applied to claim 15 above, and further in view of Murray. The modified Groves device teaches the claimed invention including the use of flexible chambers and the weights comprising granular weights. Groves teaches the claimed invention, and in another embodiment teaches the desirability of having a second strap. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to provide a second fastening strap as taught in other embodiments of Groves in order to better secure the device. Groves teaches the claimed invention but fails to teach the securing bands being elastic. Murray teaches the desirability of providing an elastic securing bands citing the advantages of tighter securing. In view of the teachings of Murray, it would have been obvious to one of ordinary skill in the art at the time of invention to provide Groves with an elastic securing bands in order to provide a tighter more comfortable fit.

***Response to Arguments***

18. Applicant's arguments filed 05/17/2007 have been fully considered but they are not persuasive. Examiner respectfully points out that Applicant has not addressed or corrected the deficiencies stemming from the objection to the drawings, rejections under 35 U.S.C. 112 1<sup>st</sup> paragraph, rejections under 35 U.S.C. 112 2<sup>nd</sup> paragraph, and rejections under 35 U.S.C. 102(b) cited in the office action dated December 11, 2006. The rejections remain on the record. With respect to rejections under 35 U.S.C. 103(a), Applicant's arguments are moot in view of the new grounds of rejection. Applicant's arguments against the rejections under 35 U.S.C. 103(a) amount to an impermissible attack on the references individually. Motivation for combining the references has come from the references themselves. Applicant has also included arguments drawn toward limitations not found in the claims. The claims still remain broad in light of the cited prior art, and the claim language is not sufficient to overcome the art of record. Examiner additionally points out that amendments to the claims fail to satisfy the written description requirement of 35 U.S.C. 112 1<sup>st</sup> paragraph, as the elastic nature of the securing straps is in no way, shape, or form disclosed in the specification of the current application.

### ***Conclusion***

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C. Mathew whose telephone number is (571) 272-4978. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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F.C. Mathew  
August 5, 2007